

HOUSE BILL 1105

By Buck

AN ACT to amend Tennessee Code Annotated, Title 29,
Chapter 26, relative to medical malpractice.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) Within ninety (90) days after filing a complaint in any medical negligence action, the plaintiff or the attorney for the plaintiff must file a certificate of good faith stating that:

(1) The plaintiff or plaintiff's counsel has consulted with one (1) or more medical experts;

(2) The expert or experts consulted are competent under Tennessee law to express an opinion in the case; and

(3) The expert or experts believe, based on the information available from the plaintiff's medical records and, if appropriate, from the plaintiff or anyone else with knowledge of the incident at issue:

(A) That there is a good faith basis to maintain the action on the issues of negligence and causation; or

(B) That there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the plaintiff or plaintiff's counsel; and that despite the absence of this information there is a good faith basis for maintaining the action on the issues of negligence and causation.

(b) Within ninety (90) days after service of the complaint in any medical negligence action, or within thirty (30) days after the joinder of any additional defendant

health care provider who the defendant claims to have caused or contributed to cause the injuries or death of the plaintiff in any medical negligence action, each defendant or the attorney for each defendant must file a certificate of good faith stating that:

(1) The defendant or defendant's counsel has consulted with one (1) or more medical experts other than the defendant filing the certificate or any other defendant in that action;

(2) The expert or experts consulted are competent under Tennessee law to express an opinion in the case;

(3) The expert or experts believe, based on the information available from the plaintiff's medical records and, as appropriate, others with knowledge of the incident at issue:

(A) That there is a good faith basis for denying negligence, causation or both; or

(B) That there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the defendant or defendant's counsel, and that despite the absence of this information there is a good faith basis for denying negligence, causation or both; and

(4) If the defendant alleged the fault or contributing fault of another health care provider, the expert or experts believe, based on the information available from the plaintiff's medical records and, as appropriate, others with knowledge of the incident at issue:

(A) That there is a good faith basis to allege fault against the health care provider on the issues of negligence and causation; or

(B) That there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the defendant or defendant's counsel, and that despite the absence of this information there is a good faith basis for alleging fault against the health care provider on the issues of negligence and causation.

(c) Each certificate of good faith shall affirmatively state that the signatory thereto understands that the certificate of good faith is a pleading or other paper subject to rule 11 of the Tennessee rules of civil procedure.

(d) The failure of a plaintiff to file a certificate of good faith in compliance with this section shall, upon motion, result in a dismissal of the action with prejudice. The failure of a defendant to file a certificate of good faith in compliance with this section shall, upon motion, result in a default judgment against that defendant. The failure of the defendant to file a certificate of good faith in compliance with this act alleging fault of another health care provider shall, upon motion, result in the allegations against the health care provider being stricken with prejudice unless the plaintiff consents to waive compliance with this act. If the allegations are stricken, no defendant (except a defendant who complied with this act) can argue and neither the judge nor jury shall consider the fault, if any, of the accused health care provider. The court may upon motion excuse compliance with this act or grant an extension within which to file a certificate of good faith if the court determines that a health care provider who has medical records relevant to the issues in the case has failed to timely produce medical records upon timely request or for other good cause shown.

(e) If any party to a medical negligence action believes in good faith that the certificate of good faith was given in violation of rule 11 and the court, after hearing,

determines that rule 11 was violated, the court shall award appropriate sanctions occasioned by the violation and, if the signatory was a lawyer, shall forward the order to the Tennessee board of professional responsibility for appropriate action. Upon proof that a party or lawyer for a party has been determined to have filed a certificate of good faith in violation of rule 11 in three or more cases in any court of record in Tennessee, the court may, upon motion, require the party or lawyer for a party to post a bond in the amount of ten thousand dollars (\$10,000) per adverse party to secure payment of rule 11 sanctions for any violation of this section in such case.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.